

JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney
JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
VICTORIA R. CARRADERO (CSBN 217885)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-7181
Facsimile: (415) 436-6748
Email: victoria.carradero@usdoj.gov

Attorneys for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

| | | |
|------------------------------------|---|----------------------------|
| TSEGEREDA FRE AND MEHRETEAB ARAYA, |) | No. C 09-4543-EDL |
| Plaintiffs, |) | STIPULATION OF SETTLEMENT; |
| v. |) | PROPOSED ORDER |
| UNITED STATES OF AMERICA, |) | |
| Defendant. |) | |

1 It is hereby stipulated by and between each of the undersigned parties as follows:

2 1. The parties to this Stipulation of Settlement ("Stipulation") do hereby agree to settle and
3 compromise each and every claim of any kind, whether known or unknown, arising directly or
4 indirectly from the acts or omissions that gave rise to the above-captioned action and this
5 litigation under the terms and conditions set forth in this Stipulation.

6 2. This Stipulation is not, is not intended to be, and should not be construed as an admission
7 of liability or fault on the part of the United States of America, the Department of Health and
8 Human Services, La Clinica, or their agents, servants, or employees, and it is specifically denied
9 that they are liable to plaintiffs. This settlement is entered into by all parties for the purpose of
10 compromising disputed claims under the Federal Tort Claims Act and avoiding the expenses and
11 risks of further litigation.

12 3. In consideration for the parties' agreement to accept the terms and conditions of this
13 Stipulation, defendant United States agrees to pay to plaintiffs Tsegereda Fre and Mehreteab
14 Araya the total sum of \$ 312,500.00 (hereinafter "Settlement Amount"), subject to
15 the further terms and conditions set forth in this Stipulation:

16 A. After counsel for the United States receives (1) this Stipulation signed by all parties to
17 said document; (2) the Social Security numbers or tax identification numbers of plaintiffs and
18 their attorney; and (3) a written acknowledgment from each State, County, local government,
19 private entity, and private individual, including but not limited the County of Alameda Medical
20 Center and/or Highland Hospital, that it will not pursue the United States for payment of their
21 past, present, and future claims or liens for reimbursement or payment any such State, County,
22 local government, public entity, private entity, or private individual may have arising from any
23 benefits, payments or services made or provided to or on behalf of Tsegereda Fre or Mehreteab
24 Araya by any such State, County, local government, public entity, private entity, or private
25 individual, counsel for the United States will send a formal request requesting that a check in the
26 Settlement Amount be issued made jointly payable to Tsegereda Fre, Mehreteab Araya and the
27 Law Offices of Ira Leshin. Should Defendant not receive the written acknowledgment from any
28 lien claimant(s) set forth in item (3) herein within 15 business days after execution of this

1 agreement, Defendant's counsel will send a formal request requesting that a check in the
 2 Settlement Amount be issued jointly to the County of Alameda Medical Center/Highland
 3 Hospital and any other lien claimants who may assert liens during the 15 business day time
 4 period referenced above, Tsegereda Fre, Mehreteab Araya and the Law Offices of Ira Leshin. It
 5 is understood that counsel for the United States cannot guarantee by when payment of the
 6 Settlement Amount will be received; however, Defendant's counsel will make her best efforts to
 7 expeditiously process payment. Upon receipt of the settlement check, counsel for the United
 8 States will promptly forward the settlement check to plaintiffs' counsel. The United States shall
 9 have no obligation to forward the settlement check to plaintiffs' counsel unless plaintiffs'
 10 counsel has provided counsel for the United States with a signed stipulation of dismissal, as
 11 described in paragraph 6, below.

12 B. With respect to the payment of the Settlement Amount, the plaintiffs stipulate and
 13 agree that any attorneys' fees owed in this Federal Tort Claims Act suit against the United States
 14 shall not exceed 25% of the Settlement Amount. 28 U.S.C. § 2678. Plaintiffs further agree that
 15 any such attorneys' fees, along with any costs and expenses of said action against the United
 16 States shall be paid out of the Settlement Amount paid pursuant to this paragraph and not in
 17 addition thereto. Plaintiffs agree that any fees for legal services incurred in this action shall be
 18 considered attorneys' fees and not costs, shall be subject to the provisions of 28 U.S.C. § 2678,
 19 and shall be paid out of the Settlement Amount and not in addition thereto.

20 C. Plaintiffs stipulate and agree that each is legally responsible for any and all past,
 21 present, and future liens or claims for payment or reimbursement against that plaintiff, including
 22 any past, present, and future liens or claims for payment or reimbursement by any public entity or
 23 body, including any federal, State, County or local government, including Medi-Cal, Medicare
 24 and Medicaid, any insurance company, and any private individual or entity, arising from the
 25 injuries that are the subject matter of this action. Plaintiffs stipulate and agree that each will
 26 satisfy or resolve any and all past, present, and future liens or claims for payment or
 27 reimbursement against that plaintiff asserted by any public entity or body, including any federal,
 28 State, County, or local government, including Medi-Cal, Medicare and Medicaid, any insurance

1 company, and any private individual or entity. Plaintiffs and their attorney specifically warrant
2 and represent that, as of the date they sign this Stipulation, they have made a diligent search and
3 effort to determine the identity of any individual or entity that has or may have a lien or claim for
4 payment or reimbursement against that plaintiff arising from the injuries that are the subject
5 matter of this action and that the only such individual or entity known to plaintiffs and their
6 attorney is the County of Alameda Medical Center/Highland Hospital. Plaintiffs and their
7 guardians, heirs, executors, administrators, and assigns do hereby further agree to reimburse,
8 indemnify, and hold harmless the United States of America, the Department of Health and
9 Human Services, La Clinica, and their agents, servants, and employees, from and against any and
10 all such liens or claims of Tsegereda Fre incident to, or resulting or arising from, the acts or
11 omissions that gave rise to the above-captioned action by that plaintiff.

12 D. This settlement is subject to the approval of the Court.

13 4. Plaintiffs and their guardians, heirs, executors, administrators, and assigns do hereby
14 accept the Settlement Amount set forth above in full settlement, satisfaction, and release of any
15 and all claims, demands, rights, and causes of action of whatsoever kind and nature, including
16 any claims for negligence, loss of consortium, medical malpractice, wrongful death, damages of
17 any kind, any claims for pre-judgment or post-judgment interest, and any claims for fees, costs,
18 and expenses, whether incurred in the district court, the court of appeals, or in any other court
19 proceedings, arising from, and by reason of, any and all known and unknown, foreseen and
20 unforeseen, bodily and personal injuries, death, or damage to property, and the consequences
21 thereof, which the plaintiffs and their heirs, executors, administrators, or assigns may have or
22 hereafter acquire against the United States of America, the Department of Health and Human
23 Services, La Clinica, or their agents, servants, and employees, on account of the same subject
24 matter that gave rise to the above-captioned action. Plaintiffs and their guardians, heirs,
25 executors, administrators, and assigns do hereby further agree to reimburse, indemnify, and hold
26 harmless the United States of America, the Department of Health and Human Services, La
27 Clinica, and their agents, servants, and employees, from and against any and all such claims,
28 causes of action, liens, rights, or subrogated or contribution interests (whether such claims,

1 causes of action, liens, rights, subrogated interests, or contribution interests sound in tort,
2 contract, or statutory) of the plaintiffs incident to, or resulting or arising from, the acts or
3 omissions that gave rise to the above-captioned action by the plaintiffs.

4 5. This compromise settlement is specifically subject to each of the following conditions:

5 A. The parties agree that this Stipulation sets forth all of the terms, conditions, and
6 requirements of settlement of this action. The terms, conditions, and requirements of this
7 Stipulation are not severable and the failure to agree, fulfill, or comply with any term, condition,
8 or requirement renders the entire Stipulation and the compromise settlement null and void.

9 B. The United States District Court for the Northern District of California agrees to
10 dismiss the district court action with prejudice, with each party bearing its own fees, costs, and
11 expenses.

12 6. The parties agree that, upon approval by the Court of this Stipulation, counsel for all
13 parties shall sign a stipulation of dismissal with prejudice and proposed order, attached hereto as
14 **Exhibit A**. Counsel for the United States will retain the signed stipulation of dismissal until
15 defendant has forwarded the check for the Settlement Amount to plaintiffs' counsel. The parties
16 agree that, upon mailing of the settlement check to plaintiffs' counsel, counsel for United States
17 is authorized to file with the Court the stipulation of dismissal. Subject to the terms and
18 conditions set forth in Paragraph 3, above, plaintiffs' attorney agrees to distribute the Settlement
19 Amount as provided herein after paying or resolving any lien or claim for reimbursement or
20 payment for which plaintiffs have agreed to be solely and legally responsible under the terms of
21 this Stipulation, and attorneys fees and expenses.

22 7. The parties agree that this Stipulation, including all the terms and conditions of this
23 compromise settlement and any additional agreements relating thereto, may be made public in
24 their entirety, and the plaintiffs expressly consent to such release and disclosure pursuant to 5
25 U.S.C. § 552a(b).

26 8. The provisions of California Civil Code Section 1542 are set forth below:

27 "A general release does not extend to claims which the creditor does not know or suspect
28 to exist in his favor at the time of executing the release, which if known by him must
have materially affected his settlement with the debtor."

Plaintiffs, having been apprised of the statutory language of Civil Code Section 1542 by their attorney, and fully understanding the same, nevertheless elect to waive the benefits of any and all rights they may have pursuant to the provision of that statute and any similar provision of federal law. Plaintiffs understand that, if the facts concerning injuries or liability for damages pertaining thereto are found hereinafter to be other than or different from the facts now believed by them to be true, the Agreement shall be and remain effective notwithstanding such material difference.

9. This instrument shall constitute the entire agreement between the parties, and it is expressly understood and agreed that the agreement has been freely and voluntarily entered into by the parties hereto with the advice of counsel, who have explained the legal effect of this agreement. The parties further acknowledge that no warranties or representations have been made on any subject other than as set forth in this Agreement. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by all of the parties or their authorized representatives.

10. It is contemplated that this Stipulation may be executed in several counterparts, with multiple signature pages. All such counterparts and signature pages, together, shall be deemed to be one document.

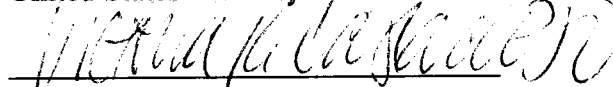
11. The signatories to this Stipulation represent that they have actual authority to bind their respective parties.

IT IS SO STIPULATED.

Respectfully submitted,

JOSEPH P. RUSSONIELLO

United States Attorney



VICTORIA R. CARRADERO

Assistant United States Attorney

DATED: July 1, 2010

PLAINTIFF

DATED: July 1, 2010

TSEGEREDA FRE

PLAINTIFF

DATED: July 1, 2010

MEHRETEAB ARAYA

DATED: July 1, 2010

LAW OFFICES OF IRA LESHIN

IRA LESHIN, Attorneys for
Plaintiffs Tsegereda Fre and Mehreteab Araya

~~PROPOSED~~ ORDER

Upon stipulation of the parties and good cause appearing, IT IS SO ORDERED.

DATED: July 13, 2010

Elizabeth D. Laporte
The Honorable Elizabeth D. Laporte
United States Magistrate Judge

Exhibit A

JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney
JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
VICTORIA R. CARRADERO (CSBN 217885)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-7181
Facsimile: (415) 436-6748
Email: victoria.carradero@usdoj.gov

Attorneys for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TSEGEREDA FRE AND MEHRETEAB)
ARAYA,)
Plaintiffs,)
v.)
UNITED STATES OF AMERICA,)
Defendant.)

No. C 09-4543-EDL

**STIPULATION OF DISMISSAL AND
[PROPOSED] ORDER**

1 Plaintiffs TSEGEREDA FRE AND MEHRETEAB ARAYA ("Plaintiffs") and Defendant
2 UNITED STATES OF AMERICA ("Federal Defendant"), by and through their undersigned
3 counsel, hereby stipulate to the dismissal with prejudice of all claims in this lawsuit *Tsegereda*
4 *Fre and Mehreteab Araya v. United States of America*, U.S. District Court Northern District of
5 California Case No. C 09-4543 EDL. Each side will bear its own attorneys' fees, expenses, and
6 costs.

7 **IT IS SO STIPULATED.**

8
9 Respectfully submitted,
10 DATED: July ___, 2010 JOSEPH P. RUSSONIELLO
11 United States Attorney

12
13 _____
14 VICTORIA R. CARRADERO
Assistant United States Attorney

15 DATED: July ___, 2010 LAW OFFICES OF IRA LESHIN

16
17 _____
18 IRA LESHIN, Attorneys for
19 Plaintiffs Tsegereda Fre and Mehreteab Araya

20
21 **PURSUANT TO THE ABOVE STIPULATION AND AGREEMENT, IT IS APPROVED**
22 **AND SO ORDERED:**

23 DATED: _____
24 _____
25 The Honorable Elizabeth D. Laporte
26 United States Magistrate Judge
27
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